*Louisville Chancery Court, Kentucky.*

WIGHTMAN *vs.* THE STEAMBOAT GEORGE ALBREE.

1. Statutory liens on steamboats and other vessels.
2. Legislative competency to make such liens superior to the title of purchasers without notice out of the State.
3. Comity of courts not of the State where the statute was passed.
4. Constitutional law.
5. The statute of Kentucky, which gives to material-men and others their lien upon steamers, &c., is not unconstitutional in extending that lien to work done, &c., out of the State. But it cannot be applied in such case, as against a *bona fide* purchaser in any other State, in which the lien does not exist, or has expired.

The opinion of the court was delivered August 18, 1855, by

PIRTLE, Chancellor.—This is a proceeding *in rem* against the steamboat, to subject her for work done and materials furnished in building in the state of Pennsylvania.

The statute of this state provides, that "mechanics, tradesmen, and others," shall have a lien on a steamboat or other vessel, "for work, supplies, materials, done or furnished on or towards the building or equipping the boat or vessel in this state," and when so done or furnished out of the state, there shall be a like lien therefor, "which shall have precedence next after that given when done or furnished in this state, &c." The ninth section of the act, says "The liens given by this chapter shall not be enforced against a purchaser without actual notice thereof, unless suit be instituted within one year from the time the cause of action accrued, or unless notice thereof be endorsed on, or attached to the enrolment of the boat or vessel."

By the law of Pennsylvania there was a lien on the boat for the building and materials, but this lien was lost after the first voyage of the boat from the state; and she had made two trips to St. Louis in the state of Missouri, before this attachment. She had also been sold by the original owners to others, who had sold her to the present claimants in Pennsylvania, before the attachment.

There are so many statutes in the different States in reference to liens on steamboats, that it becomes necessary, in expounding the

provisions of these acts, to look to the principles that govern the general words (or even the special language, sometimes,) used by them. The counsel for the complainants contends, that it will satisfy our statute to confine the remedy to our own boats, and more than this would make the act unconstitutional, because it would give a right to a party doing work, &c., abroad, which he did not have at home.

I do not see how this would violate any provision of the constitution. It would not impair the obligation of a contract, it only affords a better remedy, a stronger obligation—just the reverse of *impair*. It would be wrong in some instances, to afford a different and stronger remedy than that existing when the contract was made, and perhaps the only one contemplated by the parties; but this wrong is not one to be prevented by the constitution; it was not one of the evils contemplated by the convention of 1787; but the taking away the remedy existing when the contract was made, or the leaving an insufficient remedy, or in some other manner affecting the obligation so as to weaken it, is within the meaning of the great instrument.

It is competent for the legislature, too, to say that the lien afforded by the act, to persons doing work, &c., in Kentucky, shall stand against *bona fide* purchasers, whether the purchase were made in this state or out of it. If the purchase has been made in the state, its validity and effect must necessarily depend on, or be subject to the state laws; if made out of the state, then still, with regard to a lien declared by the state, a court in the state must be bound by the force which the legislature has said the lien shall have. The question is not one of equity, or right and justice, but of the power of the legislature to say what consideration the court shall give to the lien. If courts in other states were called on to enforce such a lien against a purchaser without notice, they might well reject the principle, for as an act of comity is all that could be asked of them, they would have a right to look to the full justice of the case. With regard to contracts of sale of boats made in this state, when the lien existed for work, &c., done here, I think the courts abroad would feel bound to enforce the lien as it would be done in our own courts.

I am satisfied that the legislature did intend to include boats

belonging to other states. A question was suggested by the Court of Appeals, in *Strother, &c.*, vs. *Lovejoy*, 8 B. Mon., 136, as to whether one of the liens given by the act of 1839, included vessels not of this state, and when the revisors drew the late act, being aware of this, the provisions of this new law were extended. The terms are general on this kind of lien, for building, &c., and if boats not of the state, were not meant to be included, some exception would have attended the general words. I am not sure, however, that a case like this was intended to be included.

The question left, is, can the legislature include such a case as this? The counsel for the plaintiffs contend, that as the boat had passed down and up the Ohio river, in that part within the domain of Kentucky, (for it must be recollected, that Kentucky claims the Ohio from the mouth of the Big Sandy down) it had become subject to the law of this state, that a lien was fixed. I do not see how that could be. Passing by Kentucky or navigating the rivers of Kentucky in the interior, could have no effect on the boat when she had gone home untouched by any of Kentucky's process. When she was back again in Pennsylvania, the law of that state fixed no lien upon her because she had been in Kentucky, and it is the law of that state that must be looked to where nothing was done in this.

Then, there was no lien for the building, &c., any longer by the laws of the state where the building, &c., were done. It had expired, it was declared not to exist by statute. The boat could be sold by law there, and the whole property would pass free of debt, and it is not within the legislative competency of this state to act on the subject at all. It had no dominion over this purchase—it belonged exclusively to Pennsylvania; nothing was left for this state to act upon, except with respect to the title, and that was good in the state where it was made. We need not appeal to the constitution about this. There is no provision on such a subject. None was needed, any more than a provision in that instrument that the legislature shall not take the property of A and give it to B. Such is not a legislative power at all; (so much of this power as is legitimate, belongs to the judiciary) and therefore there was no necessity of an inhibition. The legislature cannot make a debt

that did not exist, or put A's debt on B's property after it had been acquired free of this debt, any more than the laws of a state can be extended out of its dominion, to prevent property from being so acquired, where the debt was also created out of its dominion.

In short, where there is no lien on a boat or vessel, and she has been sold, where by the law, the title passed free, the legislature cannot compel the courts to lay any lien on such boat or vessel.

Petition dismissed.

*Ripley & Logan* and *Bullitt & Smith*, for plaintiffs.

*Speed*, for defendant.

## ABSTRACTS OF RECENT ENGLISH DECISIONS.

*Action—Malicious Prosecution.*—Declaration stated that defendant had falsely and maliciously procured plaintiff to be adjudged a bankrupt. The adjudication of bankruptcy had been made on an affidavit by defendant, containing statements which were not true in fact. The adjudication was subsequently annulled, on the ground that the affidavit did not show that an act of bankruptcy had been committed. Action maintainable, although the affidavit did not show an act of bankruptcy committed, and the Commissioner had committed an error in adjudicating plaintiff to be a bankrupt. *Farley* vs. *Danks*, 24 L. J. Q. B. 244.

*Agent—Charter party.*—By charter party between plaintiffs and defendants described as of London, merchants, it was agreed that plaintiffs' ship should proceed to Torrevieja, and there load a full cargo, at merchants' risk and expense, which said merchants thereby bound themselves to ship, and being so loaded, should proceed to Memel and deliver her cargo, being paid freight, half to be paid in cash on unloading and delivery, and remainder by good bills on London. Thirty running days to be allowed said merchants for loading at Torrevieja and discharging at Memel. At foot of charter party, "By authority of, and as agents for M. A. H. Schwedersky, of Memel," followed by signatures of plaintiff and defendants. Defendants personally liable for breach of charter party. *Lennard* vs. *Robinson*, 24 L. J. Q. B. 275; 19 Jur., 853.

*Auctioneer—Agent.*—An auctioneer may bring an action in his own name for the price of goods sold by him as auctioneer, and delivered to the